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Beverly Smith

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BROWN, Judge

Robert Henson appeals his sentence for two counts of burglary as class C felonies. Henson raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts as stated in Henson's first appeal follow:

At 1:28 a.m. on July 26, 2006, the Indianapolis Police Department received a call that two men were breaking into a garage. Officer Michael Kermion arrived at the scene and spoke to the caller, who reported that the men had driven away in a white van with Arkansas plates. Officer Kermion and Officer Frederick Lantzer discovered that two neighboring garages had been burglarized. Carl Gulde reported that his lawnmower and golf clubs were missing. Ron Thomas reported that his lawnmower, a battery jumper box, a portable radio, and a bicycle were missing. Officer Lantzer then saw a white van containing two men drive past. Officer Lantzer made a traffic stop of the van, and Henson was driving the vehicle. The passenger exited the van and attempted to walk away but was apprehended. Officer Lantzer saw a lawnmower and golf clubs in the van. Henson and the passenger were arrested, and Gulde and Thomas's missing possessions were found in the van.

The State charged Henson with two counts of burglary as class C felonies, two counts of theft as class D felonies, and one count of driving while suspended as a class A misdemeanor. The State later dismissed the driving while suspended charge. After a bench trial, the trial court found Henson guilty as charged. The trial court vacated the theft judgments of conviction due to double jeopardy concerns and sentenced Henson to consecutive six-year sentences on the burglary convictions with two years of each sentence suspended.

Henson v. State, 881 N.E.2d 36, 37-38 (Ind. Ct. App. 2008), trans. denied.

Henson appealed his sentence, and we addressed whether the trial court's imposition of consecutive sentences totaling twelve years violated Ind. Code § 35-50-1-

2(c). Id. at 38. We concluded that Henson’s consecutive sentences could not exceed ten years and remanded for resentencing. Id. at 39.

On remand, the trial court found that “it could be a mitigating factor that prolonged incarceration of Mr. Henson would be a hardship to his dependents.” Transcript at 10. The trial court found Henson’s criminal history as an aggravator. The trial court also noted the prior attempts to rehabilitate Henson had not been successful. The trial court found that the aggravating factors outweighed the mitigating factors. The trial court sentenced Henson to five years for each count of burglary as a class C felony and ordered that the sentences be served consecutively for a total sentence of ten years.

The issue is whether Henson’s sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Henson concedes that his sentence is “legally permissible” but requests this court to reduce his sentence to concurrent sentences. Appellant’s Appendix at 10.

Our review of the nature of the offense reveals that Henson burglarized two garages in Indianapolis and stole two lawnmowers, golf clubs, a battery jumper box, a portable radio, and a bicycle. Our review of the character of the offender reveals that

Henson made the following statement at the sentencing hearing regarding the time since he was incarcerated:

I started getting into a program, Statement for a Change, anger management, Inside/Outside Dad, numerous college Bible courses. I received certificates for everything. Trying to change my life around, something that I've never done throughout my life, you know, to better understand how to be a citizen.

Transcript at 6. As a juvenile, Henson was arrested and served one and one-half years in the Indiana Boys School but Henson could not recall the charging information for the offense. In 1985, Henson was convicted of burglary as a class C felony.¹ In 1987, Henson was convicted of robbery as a class B felony. In 1997, Henson was convicted of unlawful possession of a firearm as a felony. In 2002, Henson was arrested for two counts of robbery as class B felonies, carrying a handgun without a license as a class A misdemeanor, carrying a handgun without a license as a class C felony, and being an habitual offender. These charges were dismissed. In 2004, Henson was convicted of driving with a suspended license as a class A misdemeanor. In 2004, Henson was charged with residential entry as a class D felony, criminal recklessness as a class D felony, neglect of a dependent as a class D felony, intimidation as a class D felony, domestic battery as a class A misdemeanor, and battery as a class A misdemeanor. These charges were dismissed.

¹ The presentence investigation report reveals that this case was waived to adult court.

After due consideration of the trial court's decision, we cannot say that Henson's consecutive sentences of five years for each conviction of burglary as a class B felony is inappropriate in light of the nature of the offense and the character of the offender.²

For the foregoing reasons, we affirm Henson's sentence for two counts of burglary as class B felonies.

Affirmed.

ROBB, J. and CRONE, J. concur

² Henson relies on Beno v. State, 581 N.E.2d 922 (Ind. 1991) to argue that his consecutive sentences are inappropriate. We find Beno distinguishable. In Beno, after two controlled drug purchases, the defendant was convicted of two counts of dealing in cocaine and one count of maintaining a common nuisance. 581 N.E.2d at 923. The trial court sentenced the defendant to the maximum sentence for each offense and ordered the sentences to be served consecutively. Id. On appeal, the defendant argued that his sentence was manifestly unreasonable. Id. at 923. The Indiana Supreme Court held that the defendant's sentence was "not appropriate." Id. at 924. The Court noted that the defendant was convicted of committing virtually identical crimes separated by only four days. The Court then stated, "Most importantly, the crimes were committed as a result of a police sting operation." Id. The Court did not consider it "appropriate to then impose maximum and consecutive sentences for each additional violation." Id. Here, unlike in Beno, Henson's crimes were not committed as a result of a police sting operation, and Henson did not receive the maximum sentence.